



comparison class because Norfolk Southern's railroad yard and mainline parcels are improved by railroad roadbeds and tracks which include steel rails, crossties, ballast, subballast, grade and subgrade, as well as miscellaneous signal structures, switches, gates, fencing and holding areas. These roadbeds and tracks are built to support the weight of loaded trains crossing the parcels. Norfolk Southern's railroad yard and mainline parcels, therefore, are not similarly situated to lawns. The Complaint, therefore, fails to state a claim upon which the relief requested could be granted.

3. The Complaint does not allege impermissible discrimination within the meaning of §11501(b)(4) because the Utility Fee applies to all improved parcels in the City with no classifications that target or discriminate against railroad parcels. The Complaint, therefore, fails to state a claim upon which the relief requested could be granted.

The City has filed a Memorandum supporting this motion. For the reasons stated above, the City respectfully moves this Court to dismiss the Complaint, with prejudice.

Respectfully submitted,

CITY OF ROANOKE

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Of Counsel

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of June, 2016, a true and accurate copy of the foregoing was electronically filed through the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Gregory J. Haley  
Of Counsel